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Declaration and Agreement

[California Probate Code §13100, *et seq.*]

I, _____ (declarant), declare, represent, and warrant, as follows:

1. The name of the decedent is _____.

2. The decedent died on _____, 20___. The decedent died in _____, California, or if outside of California, was a resident of California at the time of death.

3. At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this declaration.

4. No proceeding is now being or has been conducted in California for administration of the decedent's estate.

or

4. The decedent's personal representative has consented in writing to the payment, transfer, or delivery to the declarant of the property described in this declaration. A copy of the decedent's personal representative's consent is attached to this Declaration.

5. The current gross fair market value of the decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code does not exceed one hundred and fifty thousand dollars (\$150,000.00).

6. The property of the decedent that is to be paid, transferred, or delivered to the undersigned (hereinafter, the "Property") is described as _____ which serves as collateral for _____ (Name of Pawnshop) ("Pawnshop"), loan number(s) _____.

This information has been provided to members of CAPA as a courtesy. It is not intended to be and should not be depended on as legal advice. It is important that all members consult with their own attorney and accounting professional to confirm the accuracy and legality of the information provided prior to using it. These documents replace all previously published versions. CAPA does not endorse, support or recommend continued use of any other versions of this information. This information is not designed to be all inclusive and summarizes the law in some instances.

7. The name of the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the Property is _____.

8. The declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the Property.

or

8. The declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Section 13006 of the California Probate Code) with respect to the decedent's interest in the Property.

9. No other person has a superior right to the interest of the decedent in the Property.

10. The declarant requests that the Property be paid, delivered, or transferred to the declarant.

11. The pawn ticket(s), as described above, shall be presented with this declaration/agreement before Pawnshop is required to release the Property to the declarant. If the pawn ticket is not presented to Pawnshop, Pawnshop may require, as a condition for the payment, delivery, or transfer of the Property, that the person presenting the declaration/agreement provide Pawnshop with a bond or undertaking in a reasonable amount determined by Pawnshop to be sufficient to indemnify Pawnshop against all liability, claims, demands, loss, damages, costs, and expenses that Pawnshop may incur or suffer by reason of the payment, delivery, or transfer of the Property.

12. Receipt by Pawnshop of this declaration/agreement constitutes sufficient acquittance for the payment of money, delivery of the Property, or changing registered ownership of the Property and discharges Pawnshop from any liability with respect to the money or Property. Pawnshop may rely in good faith on the statements in the declaration/agreement and has no duty to inquire into the truth of any statement in the declaration/agreement. Pawnshop is not liable for any taxes due by reason of paying money, delivering property, or changing registered ownership of Property and the declarant irrevocably agrees to indemnify and hold harmless Pawnshop and pay such taxes, if any, upon demand by Pawnshop.

13. Any person who fraudulently secures the payment, delivery, or transfer of the decedent's Property through the misuse of this declaration/agreement is liable to the person having such a superior right for three times the fair market value of the Property.

14. The undersigned declarant represents and warrants to Pawnshop, and agrees to indemnify and hold harmless Pawnshop for any and all fees, costs, expenses or claims arising out of or related to declarant's representations and warranties, that:

A. he/she is not a party to, bound or affected by or subject to any contract, agreement, rule, regulation or law which would be violated, contravened, breached by or under which default would occur as a result of the execution, delivery or performance by the undersigned declarant of this declaration/agreement;

B. there are no outstanding claims at law or in equity or before any governmental authority pending or to the declarant's knowledge, proposed or threatened, which would prevent the declarant from executing this declaration/agreement; and

C. there are no judgments, criminal charges (including judgments of restitution), levies or executions against the decedent which are outstanding and unsatisfied. The decedent has not made any assignment for the benefit of creditors nor has any receiving or charging order been made against the decedent under the provisions of any applicable bankruptcy or insolvency legislation nor has any petition for such an order been served upon the decedent.

15. The undersigned agrees to indemnify and hold harmless Pawnshop from and against all claims, losses, expenses, fees or charges suffered or incurred by, as a result of, or arising out of or in connection with any material breach by the declarant, or any inaccuracy of any of the representations and warranties of the declarant set forth in this declaration/agreement.

16. THE UNDERSIGNED DECLARANT, INDIVIDUALLY AND ON BEHALF OF HIMSELF/HERSELF/ITSELF, HIS/HER/ITS DESCENDANTS, ANCESTORS, DEPENDENTS, HEIRS, EXECUTORS, ADMINISTRATORS, ASSIGNS, SUCCESSORS, ATTORNEYS, AND BUSINESS ENTITIES AND THEIR OFFICERS, DIRECTORS AND SHAREHOLDERS, HEREBY FULLY RELEASES AND FOREVER DISCHARGES PAWNSHOP AND ITS DESCENDANTS, ANCESTORS, DEPENDENTS, HEIRS, EXECUTORS, ADMINISTRATORS, ASSIGNS, SUCCESSORS, ATTORNEYS, AND BUSINESS ENTITIES AND THEIR OFFICERS, DIRECTORS AND SHAREHOLDERS, FROM ANY AND ALL MANNER OF ACTION OR ACTIONS, CAUSE OR CAUSES OF ACTION, IN LAW OR IN EQUITY OR OTHERWISE, SUITS, DEBTS, LIENS, CONTRACTS, AGREEMENTS, PROMISES, LIABILITIES, CLAIMS, DAMAGES, DEMANDS, LOSS, OBLIGATIONS, COST OR EXPENSES OF ANY NATURE WHATSOEVER, KNOWN OR UNKNOWN, FIXED OR CONTINGENT WHICH PAWNBROKER OR ITS ABOVE-MENTIONED REPRESENTATIVES OR SUCCESSORS NOW HAVE OR HEREINAFTER MAY HAVE AGAINST DECLARANT OR HIS/HER/ITS ABOVE-MENTIONED REPRESENTATIVES, BY REASON OF ANY MATTER, CAUSE, OR THING ARISING OUT OF OR RELATING IN ANY MANNER TO THIS DECLARATION/AGREEMENT. HOWEVER, THE PROMISES, COVENANTS AND WARRANTIES CONTAINED IN THIS DECLARATION/AGREEMENT SHALL SURVIVE THE RELEASE SET FORTH IN THIS PARAGRAPH.

17. Declarant has been represented by independent legal counsel, or voluntarily and knowingly waives his/her/its right to independent legal counsel, and freely enters into this Agreement. Declarant further acknowledges that he/she/it is familiar with the provisions of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected the settlement with the debtor.

Being aware of said code section, declarant hereby expressly waives any and all rights he/she/it may have thereunder, as well as under any other statute or common law principle of similar effect, except

as to promises, covenants, and warranties contained herein which shall survive. This declaration/agreement shall act as a release of all future claims that may arise in conjunction with the Property, whether such claims are currently known, unknown, foreseen, or unforeseen. Declarant understands and acknowledges the significance and consequence of the specific waiver of California Civil Code section 1542, and hereby assumes full responsibility for any injuries, damages, losses, or liabilities that may hereinafter occur from the above-mentioned dealings, disputes and litigation.

18. If any act at law or equity, including an action for declaratory relief, is brought to enforce, interpret or construe the provisions of this declaration/agreement or any agreements or instruments contemplated thereunder, the prevailing party shall be entitled to recover actual attorneys' fees and costs, which may be determined by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

19. The declarant executes this declaration/agreement acting upon his/her/its independent judgment, without any representation, expressed or implied, of any kind or nature, from Pawnshop..

20. This declaration/agreement, and each and every covenant, condition or other provision herein contained, shall, upon the death, dissolution, merger, voluntary or involuntary bankruptcy, insolvency under any law, or other change, whether structural, organic or otherwise, of the declarant hereto, apply to, be binding upon and inure to the benefit or burden, as the case may be, of his/her/its respective heirs, administrators, executors, legal representatives, assigns, successors and agents.

21. This declaration/agreement contains the full, complete and entire agreement of the parties hereto relating to the subject matter hereof.

22. Declarant represents and warrants that he/she/it has full authority to enter into this declaration/agreement and to effectuate the terms and he/she/it has have not assigned or otherwise transferred any interest, claim or right referred to herein.

23. In the event that any provision of this declaration/agreement is determined to be invalid, void, voidable or illegal, in whole or in part, by a final judgment of any Court of competent jurisdiction, such provision, to that extent only, shall be deemed to be severable from the remainder of this Agreement and shall be severed therefrom, and such severance shall in no way impair or invalidate any other provision of this declaration/agreement or the severed provision to the extent it is not so determined to be invalid, void, voidable or illegal. If any provision of this declaration/agreement shall be so determined to be invalid, void, voidable or illegal by reason of the scope or breadth of such provision, such provision shall be deemed valid, operative and legal to the extent of the scope or breadth permitted by law and shall be deemed invalid, void, voidable or illegal only to the extent that the scope or breadth thereof exceeds the scope permitted by law.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this was executed on _____, 20__.

Signature of Declarant

ACKNOWLEDGMENT

State of California)
County of _____)

On _____ before me, _____
(insert name and title of the officer)
personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

NOTE: The following documents must be attached to this Declaration and Agreement:

- 1. A certified copy of the decedent's death certificate.*
- 2. Evidence of ownership of the Property. If the decedent had evidence of ownership of the Property, it must be attached. Otherwise, Pawnbroker may require that the Declarant furnish an indemnification bond or undertaking as a condition to the transfer of the Property to the Declarant.*
- 3. Copy of consent. If a probate of the decedent's estate is pending, and the decedent's personal representative consents to the transfer of the Property to the Declarant, a copy of the consent and the Court Letter of Administration issued to the personal representative must be attached.*

David S. Fisher, Partner with Gray-Duffy, LLP, has more than 25 years' experience handling complex real estate litigation, business litigation and transactions. His real estate practice includes the representation of private and institutional lenders, developers and investors in all areas of real estate, including commercial leasing, ground leasing and financing, construction and permanent financing, loan restructuring and workouts, commercial development and construction litigation. He acts as outside corporate counsel to real estate developers, general contractors, architects and engineers in matters involving real estate. His practice also includes administrative law before the Department of Real Estate, Employment Development Department and the Department of Corporations. He also represents escrow companies, real estate brokerage firms and affiliated businesses in licensing and compliance issues.

Mr. Fisher also has significant expertise in securitized personal property lending, representing pawnbrokers, title pawn, payday lenders, and other consumer finance lenders in forming businesses, preparing leases, buy-sell agreements, stock purchase agreements, warrants, options and other business agreements. In addition, he serves as legal counsel to a myriad of members of the California Pawn Association, which actively promotes the image of collateral lenders.

With his combined experience in litigation and transactional law, Mr. Fisher meticulously and personally guides every case from inception to resolution. Mr. Fisher has also been a licensed real estate broker for over 20 years with substantial experience handling residential and commercial foreclosures, loan workouts, sales, and property management. He obtained his Juris Doctorate from Pepperdine University and his Bachelors of Arts in Political Science and Spanish from University of California, Berkeley.